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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,036	01/29/2004	Terry Jackman Beal	Beal-01	4820

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EXAMINER

CHIN, PAUL T

ART UNIT PAPER NUMBER

3652

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/767,036

Applicant(s)

BEAL, TERRY JACKMAN

Examiner

PAUL T. CHIN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2004.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment filed November 29, 2004, and the arguments presented therewith have been carefully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Sims et al. (3,862,776) alone, and Sims et al. (3,862,776) in view of Whalen (4,179,954) (see PTO-892). Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" (see line 9) and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,2,4-11, and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Sims et al. (3,862,776).

Sims et al. (3,862,776) discloses a gripping device for holding a container, comprising a first elongated arm (40,41) having a first end and a second end; and a second elongated arm (30,31) having a first end and a second end wherein the first elongated arm is movably attached to the second elongated arm for enabling said arms to be moved between an open orientation and a closed orientation, and mating portions (32,42) of said arms jointly define at least one container receiving receptacle (see Fig. 2A) positioned between said ends when said arms are in the closed orientation, the at least one container receptacle comprising a side wall (32,42) having a surface (32a,32b,42a,42b) for engaging the side of the container (see Fig. 2A) and a rear wall having a surface, which is the top surface of the arms (31,41) (see Fig. 2A) for engaging the bottom portion of the container. It is pointed out that the Sims et al. device (3,862,776) contains all the structural elements as recited in the claims while the intended use (i.e. to holding a container while extracting liquid contents therefrom with a syringe) is not patentably significant, but the reference is capable of holding a container. Re claim 5, the rear wall, which is the top surface of the arm (31 or 41), comprised entirely (along longitudinally) by one of the arms. Note that applicant does not specifically define the limitation of "rear wall" and the reference, as broadly as recited, meets the claim.

Re claims 6 and 16, figure 2A shows the sidewall (32 or 42) having a substantially semi-circular shape.

Re claims 7,8, and 15, a compliant member (33) (Figs. 2B and 2C) is removably mounted on each arm.

Re claim 11, a hinge (43) arranged for movable between the open and closed positions.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3,12, and 17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sims et al. (3,862,776) in view of Whalen (4,179,954) (see PTO-892).

Sims et al. device is discussed above. Sims et al. (3,862,776) does not show *a plurality of different size container receiving receptacles* positioned between the ends of the arm. However, Whalen (4,179,954) discloses a device having a first arm (3a) and a second arm (3b) providing *a plurality of different size container receiving receptacles* (12,13,14,15) positioned between the ends of the arm. Accordingly, it would have been obvious design choice to those skilled in the art to provide *a plurality of different size container receiving receptacles* of the arm (to replace each gripping arm 32,42) on the top surface of each elongated arm (31,41) of Sims et al. (3,862,776) as taught by Whalen (4,179,954) so that the modified device would be capable of gripping a plurality of different size of containers. It is pointed out that the sidewalls of the receptacles (12-15) of Whalen (4,179,954) in combination with the rear wall, which is the top surface of the elongated arm (31,41) would be capable of gripping a plurality of different size of containers.

Response to Arguments

7. Applicant's amendment filed November 29, 2004, and the arguments presented therewith have been carefully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view

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of Sims et al. (3,862,776) alone, and Sims et al. (3,862,776) in view of Whalen (4,179,954) (see PTO-892).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Sanders (1,176,604) discloses a gripping device having a first arm, a second arm being pivotally connected to the first arm, the arms providing a plurality of different size of receptacles, half of the arm having a semi-circular shape, to grip different sized objects.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

pte

PTC



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